

### **REMARKS**

Claims 15-19 are pending for examination on the merits, claims 1-14 having been previously withdrawn pursuant to a restriction requirement.

Reconsideration is requested in view of the following remarks.

#### **Rejection of Claims 15-19 under 35 U.S.C. § 103**

Claims 15-19 stand rejected under 35 U.S.C. § 103(a) as obvious over, WO 02/46719 (corresponding to US 2004/0065093) to Fuhr, et al. ("Fuhr") in view of US 5,415,282 to Kienholz ("Kienholz"). Applicants respectfully traverse the rejection of claims 15-19.

The Examiner acknowledges that Fuhr does not teach that the frame parts come into contact with the specimen chamber such that the specimen chamber is securely clamped by the first and second frame parts. However, the Examiner contends that Kienholz remedies this deficiency in Fuhr. Applicants disagree.

In making a case for obviousness, the Examiner must: (1) determine the scope and content of the prior art; (2) ascertain the differences between the prior art and the claims at issue; (3) resolve the level of ordinary skill in the pertinent art; and (4) evaluate evidence of secondary considerations. *Graham v. John Deere*, 383 U.S. 1 (1960); *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007). When applying 35 U.S.C. § 103, the following tenets of patent law must be followed: (1) the claimed invention must be considered as a whole; (2) the references must be considered as a whole; (3) the references must be viewed without the benefit of impermissible hindsight afforded by the claimed invention; and (4) the standard for determining obviousness is a reasonable expectation of success. MPEP § 2141.

Kienholz discloses a container for accommodating biological specimens. In one embodiment, each specimen is first accommodated in a tube 14, and a plurality of tubes 14 are enclosed in a containment bag 12 which is then placed into a recessed compartment 34 in a container 10; the compartment 34 is formed by indentations 32a and 32b with respect to interior walls 28a and 28b in molded plastic sections 10a and 10b, respectively. Kienholz at col. 2, lines 11-42 and Figs. 1-3. The bag 12 comprises flexible sheets 36a, 36b, and 36c made from a transparent polyethylene thin film, the combined thickness of the sheets allowing the bag 12 to lie flat between the walls 28a and 28b when the sections 10a and 10b

are closed on each other at the rims 18a and 18b. Kienholz at col. 2, lines 37-42 and 59-68 and Fig. 2. Therefore, it is readily apparent to one of ordinary skill in the art that the walls 28a and 28b of the sections 10a and 10b contact only the bag 12 and do not contact the specimen tubes 14, which are received into the recessed compartment 34. Accordingly, the specimen tubes are not "clamped by the first and second frame parts" (i.e., the sections 10a and 10b), as recited in claim 15. Rather, Kienholz teaches that an arrangement wherein the specimen tubes 14 are not clamped by the sections 10a and 10b provides the advantage of allowing the bag 12 containing the specimen tubes 14 to be removed from the container 10 without the hazard or difficulties of separately handling individual specimen tubes 14. Kienholz at col. 4, lines 41-54.

In another embodiment which is indicated as having the same advantage, Kienholz discloses that the specimen is first accommodated in a pouch 72 which is then placed in a bag 12, as before, and the bag 12 is then disposed between mating surfaces of liners 64 and 68 to position the sample pouch 72 inside a cavity within a container 60. Kienholz at col. 4, line 55 – col. 5, line 10 and Figs. 6-8. As in the first embodiment, the pouch 72 is not contacted by either of the liners 64 and 68, and thus is not clamped by those parts.

Because neither Fuhr nor Kienholz teaches a step of connecting first and second frame parts such that "the first and second frame parts come into contact . . . with the specimen chamber, wherein the specimen chamber is securely clamped by the first and second frame parts," the combination of Fuhr and Kienholz would not result in the claimed invention. Moreover, because Kienholz teaches advantages of not clamping the individual specimen tubes between the container sections, a person of ordinary skill in the art would have been dissuaded from even attempting the claimed arrangement based on the teachings of Fuhr and Kienholz.

Therefore, claim 15 is nonobvious over Fuhr in view of Kienholz. Claims 16-19 depend from claim 15, and without prejudice to their individual merits, are nonobvious for at least the same reasons as claim 15. Accordingly, Applicants respectfully request that the rejections be withdrawn.

**Conclusion**

In view of the foregoing, the application is believed to be in condition for allowance. Withdrawal of all rejections, and an early notice of allowance of claims 15-19, are earnestly solicited.

Respectfully submitted,

GUNTER FUHR, et al.

BY:

  
LARRY S. ZELSON  
Registration No. 48,553  
DRINKER BIDDLE & REATH LLP  
One Logan Square  
18th & Cherry Streets  
Philadelphia, PA 19103-6996  
Tel: (215) 988-2932  
Fax: (215) 988-2757  
larry.zelson@dbb.com  
*Attorney for Applicants*